

November 3, 2016

**FILED VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation**  
**WC Docket No. 10-90**  
**WT Docket No. 10-208**

Dear Ms. Dortch:

On November 1, 2016, undersigned counsel and Kevin Frawley, on behalf of Smith Bagley, Inc., met with Nicholas Degani in Commissioner Pai's office; Amy Bender in Commissioner O'Rielly's office; Edward Smith, Gigi Sohn, and Tim Campbell in Chairman Wheeler's office, along with John Williams of the Office of General Counsel; and with Jon Wilkins, Jim Schlichting, Mark Montano, Sue McNeil, and Margaret Wiener in the Wireless Telecommunications Bureau. On November 2, 2016, we met with Claude Aiken in Commissioner Clyburn's office and Travis Litman in Commissioner Rosenworcel's office.

We discussed SBI's correspondence of October 26, 2016, a copy of which can be accessed at <https://www.fcc.gov/ecfs/filing/10261682207349>. Specifically, SBI urged the Commission to afford special treatment for Tribal Lands in the Lower 48, similar to that provided in the Commission's recent "Alaska Plan" order that assigned over \$1.5 billion in universal service funding to accelerate and preserve broadband deployment in Alaska over the next ten years.<sup>1</sup>

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<sup>1</sup> See, *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-115 (Aug. 31, 2016), at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-115A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-115A1.pdf).

We explained that the needs of many rural Tribal Lands in the Lower 48 are as dire as those in Alaska, citing many of the statistics set forth in our October 26 submission. Carriers such as SBI that have built extensive mobile wireless networks over the past twenty years in some of the highest cost and most difficult demographic areas cannot raise prices or reduce expenses to offset the substantial amount of federal high-cost support being provided, which is critical to maintaining existing networks and upgrading to 4G LTE in the near future.

We proposed a Tribal Lands Plan, modeled on the FCC's recent Alaska Plan, a copy of which was provided to the staff and is enclosed with this letter.

We also committed to provide data that would enable the Commission to determine the cost of a Tribal Lands Plan and identify potentially affected Covered Locations, and will submit that data shortly.

We reiterated to the Commission that in very remote high-cost areas, any bid in a Tribal Mobility Fund auction must necessarily be high, due primarily to the low population density and the extraordinary cost of access to fiber and other backhaul facilities. Prior support auctions have dramatically favored bidders in lower-cost areas where the per-mile or per-household bid amounts are much lower. The Commission simply cannot afford to have an auction that concludes with little or no Tribal support being available to those areas that need it most, similar to the West Virginia problem in Mobility Fund Phase I. SBI believes that a modified Alaska Plan is the best way to prioritize support for Tribal Lands most in need.

Should you have any questions, please contact undersigned counsel directly.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaFuria".

David A. LaFuria  
Counsel for Smith Bagley, Inc.

cc (with enclosures):

Nicholas Degani  
Amy Bender  
Claude Aiken  
Travis Litman  
Edward Smith  
Gigi Sohn  
Tim Campbell  
John Williams  
Jon Wilkins  
Jim Schlichting  
Mark Montano  
Sue McNeil  
Margaret Wiener  
Kevin Frawley

## Exhibit A – Proposed Tribal Lands Plan Rule

### **§54.\_\_\_\_ Tribal Lands Plan for competitive eligible telecommunications carriers serving remote Tribal Lands.**

(a) *Election of support.* Subject to the requirements of this section, competitive eligible telecommunications carriers serving Tribal Lands as defined in 47 C.F.R. §54.400(e), shall have a one-time option to elect to participate in the Tribal Lands Plan. Carriers exercising this option with approved performance plans shall have their support frozen for a period of ten years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau.

(b) *Carriers eligible for support.* A competitive eligible telecommunications carrier shall be eligible for frozen support pursuant to the Tribal Lands Plan if that carrier serves Tribal Lands having a household telephone penetration rate of less than 90%, as shown in the 2010 U.S. Census, and if that carrier certified that it served Covered Locations in its September 30, 2011 filing of line counts with the Administrator, and submits a performance plan by March 31, 2017.

(c) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, each Tribal Lands Plan participant shall receive monthly Tribal Lands Plan support in an amount equal to the annualized monthly support amount it received for December 2014. Tribal Lands Plan participants shall no longer be required to file line counts.

(d) *Use of frozen support.* Frozen support allocated through the Tribal Lands Plan may only be used to provide mobile voice and mobile broadband service in those census blocks on covered Tribal Lands within the carrier's ETC service area that did not, as of December 31, 2014, receive 4G LTE service directly from providers that were unsubsidized and covering, in the aggregate, at least 85 percent of the population of the block. Nothing in this section shall be interpreted to limit the use of frozen support to build or upgrade middle-mile infrastructure outside covered Tribal Lands if such middle mile infrastructure is necessary to the provision of mobile voice and mobile broadband service on covered Tribal Lands. Tribal Lands Plan participants may use frozen support to provide mobile voice and mobile broadband service on covered Tribal Lands served by competitive eligible telecommunications carrier partners of ineligible carriers if those areas are served using the competitive eligible telecommunications carrier's infrastructure.

(e) *Performance plans.* In order to receive support pursuant to this section, a competitive eligible telecommunications carrier must be subject to a performance plan approved by the Wireless Telecommunications Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with paragraph (d) of this section and the requirements adopted by the Commission for the Tribal Lands Plan. For each level of wireless service offered (2G/Voice, 3G, and 4G LTE) and each type of middle mile used in connection with that level of service, the performance plan must specify minimum speeds that will be offered to a specified population by the end of the fifth year of support and by the end of the tenth year of support. Tribal Lands Plan participants shall, no later than the end of the fourth year of

the ten-year term, review and modify their end-of-term commitments in light of any new developments, including newly available infrastructure. The Wireless Telecommunications Bureau may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments. If the specific performance obligations are not achieved in the time period identified in the approved performance plans the carrier shall be subject to §54.320(c) and (d) of this chapter.